

ALVORD AND ALVORD
ATTORNEYS AT LAW
918 SIXTEENTH STREET, N.W.
SUITE 200
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

20006-2973
(202) 393-2266
FAX (202) 393-2156

OF COUNSEL
URBAN A. LESTER

0100418027

19034

October 28, 1994

OUT 11/1/94

Mr. Vernon A. Williams
Acting Secretary
Interstate Commerce Commission
Washington, D.C. 20423

19034-A

OUT 11/1/94

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) executed copies of each of the following documents: Equipment Lease Agreement, dated as of October 17, 1994, a primary document; and Equipment Schedule No. 01 and Acknowledgement and Attornment Agreement, both dated as of October 17, 1994, ~~and both~~ being secondary documents related to the aforesaid primary document. *with a* *appended*

The names and addresses of the parties to the enclosed documents are:

Equipment Lease Agreement
and Equipment Schedule No. 01

Lessor: KeyCorp Leasing, Ltd.
54 State Street
Albany, New York 12207

Lessee: GWI Leasing Corporation
72 Lewis Street
Greenwich, Connecticut 06830

RECORDED

1994 11/1/94

1994 11/1/94

Edw. M. Lester

Mr. Vernon A. Williams
October 28, 1994
Page 2

Acknowledgement and Attornment Agreement

Lessor: KeyCorp Leasing Ltd.
54 State Street
Albany, New York 12207

Sublessees: Genesee & Wyoming Industries, Inc.
71 Lewis Street
Greenwich, Connecticut 06830

Buffalo & Pittsburgh Railroad, Inc.
201 North Penn Street
Punxsutawney, Pennsylvania 15767

A description of the railroad equipment covered by the enclosed document is four GP-38 locomotives BPRR 2000 through BPRR 2003, inclusive.

Also enclosed is a check in the amount of \$63.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/bg
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

10/28/94

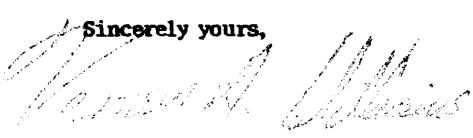
OFFICE OF THE SECRETARY

Robert W. Alvord
Alvord And Alvord
918 Sixteenth Street, NW Ste. 200
Washington, DC. 20006-2973

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/28/94 at 11:05AM, and assigned recordation number(s). 19034 and 19034-A.

Sincerely yours,

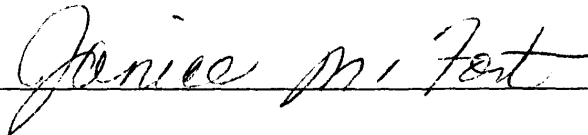

Vernon A. Williams
Acting Secretary

Enclosure(s)

(0100418027)

\$ 42.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



19034

OCT 20 1994

EQUIPMENT LEASE AGREEMENT

Dated as of October 17, 1994

Between

KEYCORP LEASING LTD.,
Lessor

and

GWJ LEASING CORPORATION,
Lessee

Four (4) GP-38 Locomotives

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on
_____, 199_ at __:__.M. Recordation Number _____.

EQUIPMENT LEASE AGREEMENT

THIS EQUIPMENT LEASE AGREEMENT dated as of October 17, 1994, is made by and between **KEYCORP LEASING LTD.**, a Delaware corporation with its principal place of business at 54 State Street, Albany, New York 12207 ("Lessor"), and **GWI LEASING CORPORATION**, with its principal place of business at 71 Lewis Street, Greenwich, CT 06830 ("Lessee").

TERMS AND CONDITIONS OF LEASE

1. **Lease.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Equipment, subject to and upon the terms and conditions set forth herein. Each Equipment Schedule shall constitute a separate and enforceable lease incorporating all the terms and conditions of this Equipment Lease Agreement as if such terms and conditions were set forth in full in such Equipment Schedule. In the event that any term or condition of any Equipment Schedule conflicts with or is inconsistent with any term or condition of this Equipment Lease Agreement, the terms and conditions of the Equipment Schedule shall govern.

2. **Disclaimer of Warranties.** LESSOR MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THERETO, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND LESSOR HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE EQUIPMENT IS LEASED TO LESSEE "AS IS" AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY LESSEE. NO DEFECT IN, OR UNFITNESS OF, THE EQUIPMENT, OR ANY OF THE OTHER FOREGOING MATTERS, SHALL RELIEVE LESSEE OF THE OBLIGATION TO PAY RENT OR OF ANY OTHER OBLIGATION HEREUNDER. LESSEE HAS MADE THE SELECTION OF THE EQUIPMENT FROM THE SUPPLIER BASED ON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY LESSOR. LESSOR IS NOT RESPONSIBLE FOR ANY REPAIRS, SERVICE, MAINTENANCE OR DEFECT IN THE EQUIPMENT OR THE OPERATION THEREOF. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (WHETHER UNDER THE UCC OR OTHERWISE), INCLUDING, WITHOUT LIMITATION, ANY LOSS, COST OR DAMAGE TO LESSEE OR OTHERS ARISING FROM ANY OF THE FOREGOING MATTERS, INCLUDING, WITHOUT LIMITATION, DEFECTS, NEGLIGENCE, DELAYS, FAILURE OF DELIVERY OR NON-PERFORMANCE OF THE EQUIPMENT. ANY WARRANTY BY THE SUPPLIER IS HEREBY ASSIGNED TO LESSEE BY LESSOR WITHOUT RECOURSE. SUCH WARRANTY SHALL NOT RELEASE LESSEE FROM ITS OBLIGATION TO LESSOR TO PAY RENT, TO PERFORM ALL OTHER OBLIGATIONS HEREUNDER AND TO KEEP, MAINTAIN AND SURRENDER THE EQUIPMENT IN THE

CONDITION REQUIRED BY SECTIONS 12 AND 13 HEREOF. Lessee's execution and delivery of a Certificate of Acceptance shall be conclusive evidence as between Lessor and Lessee that the Items of Equipment described therein are in all of the foregoing respects satisfactory to Lessee, and Lessee shall not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters; provided, however, that nothing contained herein shall in any way bar, reduce or defeat any claim that Lessee may have against the Supplier or any other person (other than Lessor).

3. Non-Cancelable Lease. THIS LEASE IS A NET LEASE AND LESSEE'S OBLIGATION TO PAY RENT AND PERFORM ITS OBLIGATIONS HEREUNDER ARE ABSOLUTE, IRREVOCABLE AND UNCONDITIONAL UNDER ANY AND ALL CIRCUMSTANCES WHATSOEVER AND SHALL NOT BE SUBJECT TO ANY RIGHT OF SET OFF, COUNTERCLAIM, DEDUCTION, DEFENSE OR OTHER RIGHT WHICH LESSEE MAY HAVE AGAINST THE SUPPLIER, LESSOR OR ANY OTHER PARTY. LESSEE SHALL HAVE NO RIGHT TO TERMINATE (EXCEPT AS EXPRESSLY PROVIDED HEREIN) OR CANCEL THIS LEASE OR TO BE RELEASED OR DISCHARGED FROM ITS OBLIGATION HEREUNDER FOR ANY REASON WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DEFECTS IN, DESTRUCTION OF, DAMAGE TO OR INTERFERENCE WITH ANY USE OF THE EQUIPMENT (FOR ANY REASON WHATSOEVER, INCLUDING, WITHOUT LIMITATION, WAR, ACT OF GOD, STRIKE OR GOVERNMENTAL REGULATION), THE INVALIDITY, ILLEGALITY OR UNENFORCEABILITY (OR ANY ALLEGATION THEREOF) OF THIS LEASE OR ANY PROVISION HEREOF, OR ANY OTHER OCCURRENCE WHATSOEVER, WHETHER SIMILAR OR DISSIMILAR TO THE FOREGOING, WHETHER FORESEEN OR UNFORESEEN.

4. Definitions. Unless the context otherwise requires, as used in this Lease, the following terms shall have the respective meanings indicated below and shall be equally applicable to both the singular and the plural forms thereof:

(a) "Applicable Law" shall mean all applicable Federal, state, local and foreign laws (including, without limitation, environmental, industrial hygiene and occupational safety or similar laws), ordinances, judgments, decrees, injunctions, writs and orders of any Governmental Authority and rules, regulations, orders, licenses and permits of any Governmental Authority.

(b) "Appraisal Procedure" shall mean the following procedure for obtaining an appraisal of the Fair Market Sales Value or the Fair Market Rental Value. Lessor shall provide Lessee with the names of three independent Appraisers. Within ten (10) business days thereafter, Lessee shall select one of such Appraisers to perform the appraisal. The selected Appraiser shall be instructed to perform its appraisal based upon the assumptions specified in the definition of Fair Market Sales Value or Fair Market Rental Value, as applicable, and shall complete its appraisal within twenty (20) business days after such selection. Any such appraisal shall be final, binding and conclusive on Lessee and Lessor and shall have the legal effect of an arbitration award. Lessee shall pay the fees and expenses of the selected Appraiser.

(c) "Appraiser" shall mean a person engaged in the business of appraising property who has at least ten years' experience in appraising property similar to the Equipment.

(d) "Authorized Signer" shall mean those officers of Lessee, set forth on an incumbency certificate (in form and substance satisfactory to Lessor) delivered by Lessee to Lessor, who are authorized and empowered to execute this Lease and all other documents the execution of which is contemplated hereby.

(e) "Certificate of Acceptance" shall mean a certificate of acceptance, in form and substance

satisfactory to Lessor, executed and delivered by Lessee in accordance with Section 7 hereof indicating, among other things, that the Equipment described therein has been accepted by Lessee for all purposes of this Lease.

(f) "Default" shall mean any event or condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default.

(g) "Equipment" shall mean an item or items of personal property designated from time to time by Lessee which are described on an Equipment Schedule and which are being or will be leased by Lessee pursuant to this Lease, together with all replacement parts, additions and accessories incorporated therein or affixed thereto.

(h) "Equipment Group" shall consist of all Items of Equipment listed on a particular Equipment Schedule.

(i) "Equipment Location" shall mean the location of the Equipment as set forth on an Equipment Schedule, or such other location (approved by Lessor) as Lessee shall from time to time specify in writing.

(j) "Equipment Schedule" shall mean each equipment lease schedule (and related Letter Agreement) from time to time executed by Lessor and Lessee with respect to an Equipment Group, pursuant to and incorporating by reference all of the terms and conditions of this Equipment Lease Agreement.

(k) "Event of Default" shall have the meaning specified in Section 22 hereof.

(l) "Fair Market Rental Value" or "Fair Market Sale Value" shall mean the value of each Unit for lease or sale, unless otherwise specified herein as determined between Lessor and Lessee, or, if Lessor and Lessee are unable to agree, pursuant to the Appraisal Procedure, which would be obtained in an arms-length transaction between an informed and willing lessor or seller (under no compulsion to lease or sell) and an informed and willing lessee or buyer (under no compulsion to lease or purchase). In determining the Fair Market Rental Value or Fair Market Sale Value of the Equipment, (a) such Fair Market Rental Value or Fair Market Sale Value shall be calculated on the assumption that the Equipment is in the condition and repair required by Sections 12 and 13 hereof, and (b) there shall be excluded from the calculation thereof the value of any upgrades and attachments made pursuant to Section 14 hereof in which the Lessor does not own an interest; provided, however, that, unless otherwise provided in such Section 22, for purposes of Section 22 of the Lease, Fair Market Sale Value of the Equipment shall be determined based upon the actual facts and circumstances then prevailing without regard to the assumptions in clause (a) above.

(m) "Governmental Action" shall mean all authorizations, consents, approvals, waivers, filings and declarations of any Governmental Authority, including, without limitation, those environmental and operating permits required for the ownership, lease, use and operation of the Equipment.

(n) "Governmental Authority" shall mean any foreign, Federal, state, county, municipal or other governmental authority, agency, board or court.

(o) "ICC" shall mean the Interstate Commerce Commission.

(p) "Late Payment Rate" shall mean an annual interest rate equal to the lesser of 18% or the maximum interest rate permitted by Applicable Law.

(q) "Lease", "hereof", "herein" and "hereunder" shall mean, with respect to an Equipment Group, this Equipment Lease Agreement, the Letter Agreement and the Equipment Schedule on which such Equipment Group is described, including all addenda attached thereto and made a part thereof.

(r) "Letter Agreement" with respect to an Equipment Schedule, shall have the meaning set forth in such Equipment Schedule.

(s) "Lien" shall mean all mortgages, pledges, security interests, liens, encumbrances, claims or other charges of any kind whatsoever.

(u) "Purchase Agreement" shall mean the Agreement of Purchase and Sale dated April 11, 1994 between the Supplier and Lessee for the acquisition of the Equipment to be leased hereunder.

(v) "Related Equipment Schedule" shall have the meaning set forth in Section 27 hereof.

(w) "Renewal Notice" shall have the meaning set forth in Section 32 hereof.

(x) "Return Notice" shall have the meaning set forth in Section 13 hereof.

(y) "Rent" shall mean the periodic rental payments due hereunder for the leasing of the Equipment, as set forth on the Equipment Schedules, and, where the context hereof requires, all such additional amounts as may from time to time be payable under any provision of this Lease.

(z) "Rent Commencement Date" shall mean, with respect to an Equipment Group, the date of the Certificate of Acceptance, as set forth on the Equipment Schedule on which such Equipment Group is described.

(aa) "Stipulated Loss Value" shall mean, as of any particular date and with respect to a Unit, the amount determined by multiplying the Total Cost for such Unit by the percentage specified in the applicable Stipulated Loss Value Supplement opposite such computation date.

(ab) "Stipulated Loss Value Supplement" with respect to an Equipment Schedule, shall mean the casualty and termination stipulated loss schedule annexed as Schedule 1 to the Letter Agreement relating thereto.

(ac) "Supplier" shall mean Consolidated Rail Corporation ("Conrail").

(ad) "Term" shall mean the Initial Term, as defined in Section 8 hereof, and any Renewal Term, as defined in Section 8 hereof.

(ae) "Total Cost" shall mean, with respect to a Unit, (1) the acquisition cost of such Unit (including Lessor's capitalized costs), as set forth on the Equipment Schedule on which such Unit is described, or (2) if no such acquisition cost is specified, the Supplier's invoice price for such Unit plus Lessor's capitalized costs, or (3) if no such acquisition cost is specified and no such invoice price is obtainable, an allocated price for such Unit based on the Total Cost of all Items of Equipment set forth on the Equipment Schedule on which such Unit is described, as determined by Lessor in its sole discretion.

(af) "Unit" shall mean each unit of the Equipment.

5. Supplier Not an Agent. LESSEE UNDERSTANDS AND AGREES THAT (i) NEITHER THE SUPPLIER, NOR ANY SALES REPRESENTATIVE OR OTHER AGENT OF THE SUPPLIER, IS (1) AN AGENT OF LESSOR OR (2) AUTHORIZED TO MAKE OR ALTER ANY TERM OR CONDITION OF THIS LEASE, AND (ii) NO SUCH WAIVER OR ALTERATION SHALL VARY THE TERMS OF THIS LEASE UNLESS EXPRESSLY SET FORTH HEREIN.

6. Ordering Equipment. Lessee has selected and ordered the Equipment from the Supplier and, if appropriate, has entered into a Purchase Agreement with respect thereto. Lessor shall accept an assignment from Lessee of Lessee's rights, but none of Lessee's obligations, under any such Purchase Agreement. Lessee shall arrange for delivery of the Equipment so that it can be accepted in accordance with Section 7 hereof. If a Unit is subject to an existing Purchase Agreement between Lessee and the Supplier, Lessee warrants that such Unit has not been delivered to Lessee as of the date of the Equipment Schedule applicable thereto. If Lessee causes the Equipment to be modified or altered, or requests any additions thereto prior to the Rent Commencement Date, Lessee (i) acknowledges that any such modification, alteration or addition

to a Unit may affect the Total Cost, taxes, purchase and renewal options, if any, Stipulated Loss Value and Rent with respect to such Unit, and (ii) hereby authorizes Lessor to adjust such Total Cost, taxes, purchase and renewal options, if any, Stipulated Loss Value and Rent as appropriate. Lessee hereby authorizes Lessor to complete each Equipment Schedule with the serial numbers and other identification data of the Equipment Group associated therewith, as such data is received by Lessor.

7. Delivery and Acceptance. Upon acceptance for lease by Lessee of any Equipment delivered to Lessee and described in any Equipment Schedule, Lessee shall execute and deliver to Lessor a Certificate of Acceptance. **IT IS A CONDITION PRECEDENT TO LESSOR'S OBLIGATION TO ADVANCE FUNDS FOR THE PURCHASE OF THE EQUIPMENT THAT LESSOR SHALL HAVE RECEIVED A CERTIFICATE OF ACCEPTANCE EXECUTED BY LESSEE.** Such Certificate of Acceptance shall constitute Lessee's acknowledgement that such Equipment (a) was received by Lessee, (b) is satisfactory to Lessee in all respects and is acceptable to Lessee for lease hereunder, (c) is suitable for Lessee's purposes, (d) is in good order, repair and condition, (e) has been installed and operates properly, and (f) is subject to all of the terms and conditions of this Lease (including, without limitation, Section 2 hereof).

8. Term; Survival. With respect to any Unit, unless otherwise specified thereon, the initial term of this Lease (the "Initial Term") shall commence on the date on which such Unit is delivered to Lessee, and, unless earlier terminated as provided herein, shall expire on the date on which the final payment of Rent for such Unit is due and paid hereunder. With respect to a Unit, any renewal term of this Lease (individually, a "Renewal Term"), as contemplated hereby, shall commence immediately upon the expiration of the Initial Term or any prior Renewal Term, as the case may be, and, unless earlier terminated as provided herein, shall expire on the date on which the final payment of Rent is due and paid hereunder. All obligations of Lessee hereunder shall survive the expiration, cancellation or other termination of the Term hereof.

9. Rent. With respect to Each Unit, Lessee shall pay the Rent set forth on the Equipment Schedule applicable to such Unit, commencing on the Rent Commencement Date, and, unless otherwise set forth on such Equipment Schedule, on the same day of each payment period thereafter for the balance of the Term. Rent shall be due whether or not Lessee has received any notice that such payments are due. All Rent shall be paid to Lessor at its address set forth on the Equipment Schedule, or as otherwise directed by Lessor in writing.

10. Location; Inspection; Labels. The Equipment shall be delivered to the Equipment Location and shall not be removed therefrom without Lessor's prior written consent. Lessor shall have the right to enter upon the Equipment Location and inspect the Equipment at any reasonable time. Lessor may, without notice to Lessee, remove the Equipment if the Equipment is, in the opinion of Lessor, being used beyond its capacity or is in any manner improperly cared for, abused or misused. At Lessor's request, Lessee shall affix labels stating that the Equipment is owned by Lessor permanently in a prominent place on the Equipment and shall keep such labels in good repair and condition.

11. Use; Alterations. Lessee shall use the Equipment lawfully and only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. Lessee shall comply with all Applicable Law. Lessee shall immediately notify Lessor in writing of any

existing, pending or threatened investigation, inquiry, claim or action by any Governmental Authority in connection with any Applicable Law or Governmental Action which could adversely affect the Equipment or this Lease. Lessee, at its own expense, shall make such alterations, additions or modifications or improvements to the Equipment as may be required from time to time to meet the requirements of Applicable Law or Governmental Action. Title to all such alterations, additions, modifications or improvements shall immediately, and without further act, vest in Lessor and thereupon shall be deemed to constitute Items of Equipment and be fully subject to this Lease as if originally leased hereunder. Except as otherwise permitted herein, Lessee shall not make any alterations, additions, modifications or improvements to the Equipment without Lessor's prior written consent.

12. Repairs and Maintenance. Lessee, at Lessee's own cost and expense, shall keep the Equipment in good repair and physical condition, reasonable wear and tear excepted, in good operating condition and working order and in compliance with the manufacturer's specifications.

Lessee, at its own cost and expense and within a reasonable period of time, shall replace any part of any Unit that becomes worn out, lost, stolen, destroyed, or otherwise rendered permanently unfit or unavailable for use (whether or not such replacement is covered by the aforesaid maintenance agreement), with a replacement part of the same manufacture, value, remaining useful life and utility as the replaced part immediately preceding the replacement (assuming that such replaced part is in the condition required by this Lease). Such replacement part shall be free and clear of all Liens. Title to such replacement part shall immediately (and without further act) vest in Lessor upon installation, attachment or incorporation of the same in, on or into such Unit and thereupon shall be deemed to constitute a Unit and be fully subject to this Lease as if originally leased hereunder. Notwithstanding the foregoing, this paragraph shall not apply to any Loss or Damage (as defined in Section 16 hereof) of any Unit.

13. Return of Equipment. Upon the expiration or earlier termination of this Lease, Lessee, at its sole expense, shall return the Equipment to Lessor by delivering such Equipment to such location within two hundred (200) miles of Buffalo, New York as Lessor shall specify. Lessee agrees that the Equipment, when returned, shall be in the condition required by Section 12 hereof. All components of the Equipment shall have been properly serviced, following the manufacturer's written operating and servicing procedures, such that the Equipment is eligible for a manufacturer's standard, full service maintenance contract without Lessor's incurring any expense to repair or rehabilitate the Equipment. If, in the opinion of Lessor, any Unit fails to meet the standards set forth above, Lessee agrees to pay on demand all costs and expenses incurred in connection with repairing such Unit and restoring it so as to meet such standards, assembling and delivering such Unit. Lessee shall give Lessor ninety (90) days written notice (the "Return Notice") that Lessee is returning the Equipment as provided for above. If Lessee fails to return any Unit as required hereunder, then, all of Lessee's obligations under this Lease (including, without limitation, Lessee's obligation to pay Rent for such Unit at the rental then applicable under this Lease) shall continue in full force and effect until such Unit shall have been returned in the condition required hereunder.

14. Equipment Upgrades/Attachments. In addition to the requirements of Section 11 hereof, Lessee, at its own expense, may from time to time add or install upgrades or attachments to the Equipment during the Term; provided, that such upgrades or attachments (a) are readily

removable without causing material damage to the Equipment, (b) do not materially adversely affect the Fair Market Sale Value, the Fair Market Rental Value, residual value, productive capacity, utility or remaining useful life of the Equipment, and (c) do not cause such Equipment to become "limited use property" within the meaning of Revenue Procedure 76-30, 1976-2 C.B. 647 (or such other successor tax provision), as of the applicable delivery date or the time of such upgrade or attachment. Any such upgrades or attachments which are not required by Section 11 hereof and which can be removed without causing damage to or adversely affecting the condition of the Equipment, or reducing the Fair Market Sale Value, the Fair Market Rental Value, residual value, productive capacity, utility or remaining useful life of the Equipment shall remain the property of Lessee; and upon the expiration or earlier termination of this Lease and provided that no Event of Default exists, (a) Lessee may, at its option, remove any such upgrades or attachments and, upon such removal, shall restore the Equipment to the condition required by Section 13 hereof.

15. Sublease and Assignment. (a) EXCEPT FOR (1) THE SUBLEASE DATED AS OF THE DATE HEREOF BETWEEN LESSEE, AS LESSOR, AND GENESEE & WYOMING INDUSTRIES, INC., AS LESSEE, AND (2) THE SUBLEASE DATED AS OF THE DATE HEREOF BETWEEN LESSEE, AS LESSOR, AND BUFFALO & PITTSBURGH RAILROAD, INC., AS LESSEE (collectively, the "Initial Subleases"), LESSEE SHALL NOT, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, (I) ASSIGN, TRANSFER, PLEDGE, HYPOTHECATE OR OTHERWISE DISPOSE OF THIS LEASE, THE EQUIPMENT OR ANY INTEREST THEREIN, OR (II) SUBLET OR LEND THE EQUIPMENT TO, OR PERMIT THE EQUIPMENT TO BE USED BY, ANYONE OTHER THAN LESSEE OR LESSEE'S QUALIFIED EMPLOYEES. On or before the date hereof, Lessor shall have received an Acknowledgement and Assignment Agreement, in form and substance reasonable satisfactory to Lessor, from each of the sublessees under the Initial Subleases.

(b) No sublease (including the Initial Subleases) shall in any way discharge or diminish any of Lessee's obligations hereunder, and Lessee shall remain primarily liable hereunder for the performance of all the terms, conditions and provisions of this Lease to the same extent as if such sublease (including the Initial Subleases) had not been entered into. Each sublease (including the Initial Subleases) consented to by Lessor shall (a) be expressly subject and subordinate to all of the provisions of this Lease and to the rights and remedies of Lessor hereunder in respect of the Items of Equipment covered by such sublease (including the Initial Subleases), (b) be for a term not extending beyond the end of the Initial Term Expiration Date, as defined in Equipment Schedule 01 attached hereto, or the end of the Renewal Term then in effect, and (c) shall not be less restrictive than this Lease or include any term or provision which could reasonably be expected to result in material adverse consequences to Lessor. In addition, if Lessee enters into any such sublease (including the Initial Subleases), Lessee shall deliver to Lessor a copy of any such sublease (including the Initial Subleases) as soon as practicable after execution thereof, and Lessee shall pay all of Lessor's reasonable out-of-pocket expenses incurred in connection with such transaction. Any assignment of this Lease or sublease or transaction which constitutes or operates as an assignment or sublease of any Item of Equipment by Lessee in violation of this Section shall be void.

(c) Lessee shall promptly deliver the original "chattel paper" copy of each sublease (including the Initial Subleases) to Lessor. Lessee hereby grants Lessor a security interest in each such

sublease (including the Initial Subleases). Lessee agrees to indemnify and hold Lessor harmless against any and all reasonable out-of-pocket expenses, claims, demands and liabilities of whatever nature relating to or in any way arising out of such sublease (including the Initial Subleases) or assignment, including, without limitation all reasonable out-of-pocket costs, damages, charges, attorneys' fees and expenses arising out of or necessitated by assertion of any such claim or demand with respect to such sublease (including the Initial Subleases) or assignment.

(d) Lessor, at any time with or without notice to Lessee, may sell, transfer, assign and/or grant a security interest in this Lease, any Equipment Schedule or any Unit. In any such event, any such purchaser, transferee, assignee or secured party shall have and may exercise all of Lessor's rights hereunder with respect to the items to which any such sale, transfer, assignment and/or security interest relates, and LESSEE SHALL NOT ASSERT AGAINST ANY SUCH PURCHASER, TRANSFEREE, ASSIGNEE OR SECURED PARTY ANY DEFENSE, COUNTERCLAIM OR OFFSET THAT LESSEE MAY HAVE AGAINST LESSOR. Lessee acknowledges that no such sale, transfer, assignment and/or security interest will materially change Lessee's duties hereunder or materially increase its burdens or risks hereunder. Lessee agrees that upon written notice to Lessee of any such sale, transfer, assignment and/or security interest, Lessee shall acknowledge receipt thereof in writing and shall comply with the directions and demands of Lessor's successor or assign.

16. Loss of or Damage to Equipment. (a) Lessee shall bear the entire risk of loss, theft, destruction, disappearance of or damage to any and all Items of Equipment ("Loss or Damage") from any cause whatsoever during the Term hereof until the Equipment is returned to Lessor in accordance with Section 13 hereof. No Loss or Damage shall relieve Lessee of the obligation to pay Rent or of any other obligation under this Lease.

(b) In the event of Loss or Damage to any Unit, Lessee, at the option of Lessor, shall within thirty (30) days following such Loss or Damage: (1) place such Unit in good condition and repair, in accordance with the terms hereof; (2) replace such Unit with replacement equipment (acceptable to Lessor) in as good condition and repair, and with substantially the same value, remaining useful economic life and utility, as such replaced Unit immediately preceding the Loss or Damage (assuming that such replaced Unit is the condition required by this Lease), which replacement equipment shall be free and clear of all Liens; or (3) pay to Lessor the sum of (i) all Rent due and owing hereunder with respect to such Unit (at the time of such payment) plus (ii) the Stipulated Loss Value as of the date of such Loss or Damage with respect to such Unit, as set forth on the Schedule applicable thereto. Upon Lessor's receipt of the payment required under subsection (3) above, Lessee shall be entitled to Lessor's interest in such Unit, in its then condition and location, "as is" and "where is", without any warranties, express or implied. If Lessee replaces the Unit pursuant to subsection (b) above, title to such replacement equipment shall immediately (and without further act) vest in Lessor and thereupon shall be deemed to constitute Items of Equipment and be fully subject to this Lease as if originally leased hereunder. If Lessee fails to either restore or replace the Unit pursuant to subsection (1) or (2) above, respectively, Lessee shall make the payment under subsection (3) above.

17. Insurance. (a) Lessee, at all times during the Term hereof (until the Equipment shall have been returned to Lessor) and at Lessee's own cost and expense, shall maintain (1) insurance against all risks of physical loss or damage to the Equipment (including theft and collision for

Equipment consisting of motor vehicles) in an amount not less than the full replacement value thereof or the Stipulated Loss Value thereof, whichever is greater, and (2) comprehensive public liability and property damage insurance.

(b) All insurance policies required hereunder shall (1) require 30 days' prior written notice of cancellation or material change in coverage to Lessor (any such cancellation or change, as applicable, not being effective until the thirtieth (30th) day after the giving of such notice); (2) name Lessor as an additional insured under the public liability policies and name Lessor as sole loss payee under the property insurance policies; (3) not require contributions from other policies held by Lessor; (4) waive any right of subrogation against Lessor; (5) in respect of any liability of any of Lessor, except for the insurers' salvage rights in the event of a Loss or Damage, waive the right of such insurers to set-off, to counterclaim or to any other deduction, whether by attachment or otherwise, to the extent of any monies due Lessor under such policies; (6) not require that Lessor pay or be liable for any premiums with respect to such insurance covered thereby; (7) be in full force and effect throughout any geographical areas at any time traversed by any Unit; and (8) contain breach of warranty provisions providing that, in respect of the interests of Lessor in such policies, the insurance shall not be invalidated by any action or inaction of Lessee or any other person (other than Lessor) and shall insure Lessor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by Lessee or by any other person (other than Lessor). Prior to the first date of delivery of any Unit hereunder, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this Section, Lessee shall deliver to Lessor a duplicate original of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this Section.

18. General Tax Indemnification. Lessee shall pay when due and shall indemnify and hold Lessor harmless from and against (on an after-tax basis) any and all taxes, fees, withholdings, levies, imposts, duties, assessments and charges of any kind and nature (together with interest and penalties thereon)(including, without limitation, sales, use, gross receipts, personal property, ad valorem, business and occupational, franchise, value added, leasing, leasing use, documentary, stamp or other taxes) imposed upon or against Lessor, Lessor's assigns, Lessee or any Unit by any Governmental Authority with respect to any Unit or the manufacturing, ordering, sale, purchase, shipment, delivery, acceptance or rejection, ownership, titling, registration, leasing, subleasing, possession, use, operation, removal, return or other dispossession thereof or upon the rents, receipts or earnings arising therefrom or upon or with respect to this Lease, excepting only all Federal, state and local taxes on or measured by Lessor's net income (other than income tax resulting from making any alterations, improvements, modifications, additions, upgrades, attachments, replacements or substitutions by Lessee). Whenever this Lease terminates as to any Unit, Lessee shall, upon written request by Lessor, advance to Lessor the amount determined by Lessor to be the personal property or other taxes on said item which are not yet payable, but for which Lessee is responsible, provided Lessor provides Lessee with copies of tax bills supporting Lessor's request.

19. Lessor's Right to Perform for Lessee. If Lessee fails to perform or comply with any of its obligations contained herein, Lessor may (but shall not be obligated to do so) itself perform or comply with such obligations, and the amount of the reasonable costs and expenses of Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Late Payment Rate, shall be payable by Lessee to Lessor upon demand. No such

performance or compliance by Lessor shall be deemed a waiver of the rights and remedies of Lessor or any assignee of Lessor against Lessee hereunder or be deemed to cure the default of Lessee hereunder.

20. Delinquent Payments; Interest. If Lessee fails to pay any Rent or other sums under this Lease when the same becomes due, Lessee shall pay to Lessor a late charge equal to five percent (5%) of such delinquent amount. Such late charge shall be payable by Lessee upon demand by Lessor and shall be deemed Rent hereunder. In no event shall such late charge exceed the maximum amounts permitted under Applicable Law.

21. Personal Property; Liens. Lessor and Lessee hereby agree that the Equipment is, and shall at all times remain, personal property notwithstanding the fact that any Unit may now be, or hereafter become, in any manner affixed or attached to real property or any improvements thereon. Lessee shall at all times keep the Equipment free and clear from all Liens. Lessee shall (i) give Lessor immediate written notice of any such Lien, (ii) promptly, at Lessee's sole cost and expense, take such action as may be necessary to discharge any such Lien, and (iii) indemnify and hold Lessor, on an after-tax basis, harmless from and against any loss or damage caused by any such Lien.

22. Events of Default; Remedies. (a) As used herein, the term "Event of Default" shall mean any of the following events: (1) Lessee fails to pay any Rent within ten (10) days after the same shall have become due; (2) Lessee becomes insolvent or makes an assignment for the benefit of its creditors; (3) a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of Lessee's assets is appointed with or without the application or consent of Lessee; (4) a petition is filed by or against Lessee under any bankruptcy, insolvency or similar legislation; (5) Lessee violates or fails to perform any provision of either this Lease or any other loan, lease or credit agreement or any acquisition or purchase agreement with Lessor or any other party and such violation or failure shall continue unremedied for 30 days after written notice thereof from Lessor; (6) Lessee violates or fails to perform any covenant or representation made by Lessee herein and such violation or failure shall continue unremedied for 30 days after written notice thereof from Lessor; (7) any representation or warranty made herein or in any Lease, certificate, financial statement or other statement furnished to Lessor shall prove to be false or misleading in any material respect as of the date on which the same was made and such untruth or incorrectness shall continue unremedied for 30 days after written notice thereof from Lessor; (8) Lessee makes a bulk transfer of furniture, furnishings, fixtures or other equipment or inventory; or (9) there is a material adverse change in Lessee's financial condition since the first Rent Commencement Date of any Equipment Schedule executed in connection herewith. An Event of Default with respect to any Equipment Schedule hereunder shall, at Lessor's option, constitute an Event of Default for all Equipment Schedules hereunder and any other agreements between Lessor and Lessee.

(b) Upon the occurrence of an Event of Default, Lessor may do one or more of the following as Lessor in its sole discretion shall elect: (1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; (2) sell any Unit at public or private sale; (3) hold, keep idle or lease to others any Unit as Lessor in its sole discretion may determine; (4) by notice in writing to Lessee, terminate this Lease, without prejudice to any other remedies hereunder; (5) demand that Lessee, and Lessee shall, upon written demand of Lessor and at

Lessee's expense forthwith return all Items of Equipment to Lessor or its order in the manner and condition required by, and otherwise in accordance with all of the provisions of this Lease, except those provisions relating to periods of notice; (6) enter upon the premises of Lessee or other premises where any Unit may be located and, without notice to Lessee and with or without legal process, take possession of and remove all or any such Items of Equipment without liability to Lessor by reason of such entry or taking possession, and without such action constituting a termination of this Lease unless Lessor notifies Lessee in writing to such effect; (7) by written notice to Lessee specifying a payment date, may demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, any unpaid Rent due prior to the payment date specified in such notice plus whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the Late Payment Rate from the payment date specified in such notice to the date of actual payment): (i) an amount, with respect to a Unit, equal to the Rent payable for such Unit for the remainder of the then current Term thereof, after discounting such Rent to present worth as of the payment date specified in such notice on the basis of a per annum rate of discount equal to five percent (5%) from the respective dates upon which such Rent would have been paid had this Lease not been terminated; or (ii) the Stipulated Loss Value, computed as of the payment date specified in such notice (provided, however, that, with respect to any Unit returned to or repossessed by Lessor, the amount recoverable under this clause (ii) shall be reduced (but not below zero) by an amount equal to the Fair Market Sales Value (taking into account its actual condition) of such Unit; (8) cause Lessee, at its expense, to promptly assemble any and all Items of Equipment and return the same to Lessor at such place as Lessor may designate in writing; and (9) exercise any other right or remedy available to Lessor under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Lease. In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing remedies, and for legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including without limitation the repayment in full of any costs and expenses necessary to be expended in repairing any Unit in order to cause it to be in compliance with all maintenance and regulatory standards imposed by this Lease. If an Event of Default occurs, to the fullest extent permitted by law, Lessee hereby waives any right to notice of sale and further waives any defenses, rights, offsets or claims against Lessor because of the manner or method of sale or disposition of any Items of Equipment. None of Lessor's rights or remedies hereunder are intended to be exclusive of, but each shall be cumulative and in addition to any other right or remedy referred to hereunder or otherwise available to Lessor or its assigns at law or in equity. No express or implied waiver by Lessor of any Event of Default shall constitute a waiver of any other Event of Default or a waiver of any of Lessor's rights.

23. Notices. All notices and other communications hereunder shall be in writing and shall be transmitted by hand, overnight courier or certified mail (return receipt requested), postage prepaid. Such notices and other communications shall be addressed to the respective party at the address set forth above or at such other address as any party may from time to time designate by notice duly given in accordance with this Section. Such notices and other communications shall be effective upon receipt.

24. General Indemnification. Lessee shall pay, and shall indemnify and hold Lessor harmless on an after-tax basis from and against, any and all liabilities, causes of action, claims,

suits, penalties, damages, losses, costs or expenses (including attorneys' fees), obligations, liabilities, demands and judgments, and Liens, of any nature whatsoever (collectively, a "Liability") arising out of or in any way related to: (a) this Lease or any other written agreement entered into in connection with the transactions contemplated hereby and thereby (including, without limitation, a Purchase Agreement, if any) or any amendment, waiver or modification of any of the foregoing or the enforcement of any of the terms hereof or any of the foregoing, (b) the manufacture, purchase, ownership, selection, acceptance, rejection, possession, lease, sublease, operation, use, maintenance, documenting, inspection, control, loss, damage, destruction, removal, storage, surrender, sale, use, condition, delivery, nondelivery, return or other disposition of or any other matter relating to any Unit or any part or portion thereof (including, in each case and without limitation, latent or other defects, whether or not discoverable, any claim for patent, trademark or copyright infringement and any and all Liabilities in any way relating to or arising out of injury to persons, properties or the environment or any and all Liabilities based on strict liability in tort, negligence, breach of warranties or violations of any regulatory law or requirement, (c) Lessee's failure to perform any covenant, or breach of any representation or warranty, hereunder; provided, that the foregoing indemnity shall not extend to (1) the Liabilities to the extent resulting solely from the gross negligence or wilful misconduct of Lessor, and (2) tax matters which are covered by Section 18 hereof and the Tax Indemnification Addendum attached to the Equipment Schedule.

25. Severability; Captions. Any provision of this Lease or any Equipment Schedule which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction. Captions are intended for convenience or reference only, and shall not be construed to define, limit or describe the scope or intent of any provisions hereof.

26. Lessor's Expense. Lessee shall pay all costs and expenses of Lessor, including attorneys' fees and the fees of any collection agencies, incurred by Lessor in enforcing any of the terms, conditions or provisions hereof or in protecting Lessor's rights hereunder.

27. Related Equipment Schedules. In the event that any Unit covered under any Equipment Schedule hereunder may become attached or affixed to, or used in connection with, Equipment covered under another Equipment Schedule hereunder (a "Related Equipment Schedule"), Lessee agrees that, if Lessee elects to exercise a purchase or renewal option under any such Equipment Schedule, or if Lessee elects to return the Equipment under any such Equipment Schedule pursuant to Section 13 hereof, then Lessor, in its sole discretion, may require that all Equipment leased under all Related Equipment Schedules be similarly disposed of.

28. Financial and Other Data. During the Term hereof, Lessee shall furnish Lessor, as soon as available and in any event within 60 days after the end of each quarterly period (except the last) of each fiscal year, and, as soon as available and in any event within 120 days after the last day of each fiscal year, consolidated financial statements of Genesee & Wyoming Industries Inc. and its subsidiaries (including Lessee), in each case certified by an independent public accountant if customarily available or requested. Lessee shall also furnish such other financial reports, information or data as Lessor may reasonably request from time to time.

29. Commitment Fee Requirement. An amount equal to the first periodic payment of Rent must accompany each Lessee proposal for an Equipment Schedule hereunder. **THIS COMMITMENT FEE IS NON-REFUNDABLE;** provided, however, that, upon Lessor's acceptance of Lessee's proposal to enter into such Equipment Schedule, such commitment fee shall be applied to the first periodic payment of Rent thereunder.

30. No Affiliation with the Supplier. Lessee hereby represents and warrants to Lessor that, except as previously disclosed in writing to Lessor, neither Lessee nor any of its officers or directors (if a corporation) or partners (if a partnership) has, directly or indirectly, any financial interest in the Supplier.

31. Representations and Warranties of Lessee. Lessee represents and warrants that: (a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation; (b) the execution, delivery and performance of this Lease and all related instruments and documents (1) have been duly authorized by all necessary corporate action on the part of Lessee, (2) do not require the approval of any stockholder, trustee or holder of any obligations of Lessee except such as have been duly obtained, and (3) do not and will not contravene any law, governmental rule, regulation or order now binding on Lessee, or the charter or by-laws of Lessee, or contravene the provisions of, or constitute a default under, or result in the creation of any lien or encumbrance upon the property of Lessee under, any indenture, mortgage, contract or other agreement to which Lessee is a party or by which it or its property is bound; (c) this Lease and all related instruments and documents, when entered into, will constitute legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with the terms thereof; (d) there are no pending actions or proceedings to which Lessee is a party, and there are no other pending or threatened actions or proceedings of which Lessee has knowledge, before any court, arbitrator or administrative agency, which, either individually or in the aggregate, would materially and adversely affect the financial condition of Lessee, or the ability of Lessee to perform its obligations hereunder; (e) Lessee is not in default under any obligation for the payment of borrowed money, for the deferred purchase price of property or for the payment of any rent under any lease agreement which, either individually or in the aggregate, would have the same such effect; (f) under the laws of the state(s) in which the Equipment is to be located, the Equipment consists solely of personal property and not fixtures; (g) the consolidated financial statements of Genesee & Wyoming Industries Inc. and its subsidiaries (including Lessee), (copies of which have been furnished to Lessor) have been prepared in accordance with generally acceptable accounting principles consistently applied ("GAAP"), and fairly present Lessee's financial condition and the results of its operations as of the date of and for the period covered by such statements, and since the date of such statements there has been no material adverse change in such conditions or operations; (g) the address stated above is the chief place of business and chief executive office of Lessee; and (h) Lessee does not conduct business under a trade, assumed or fictitious name.

32. Reserved.

33. Lessee's Waivers. To the extent permitted by Applicable Law, Lessee hereby waives (a) the right to trial by jury in any litigation in any court with respect to, in connection with or arising out of, this Lease or any document delivered in connection with this Lease, and (b) any and all rights and remedies which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, (1) to terminate, cancel, quit, repudiate or surrender

this Lease, except as expressly provided herein; (2) to reject, revoke acceptance or accept partial delivery of the Equipment; (3) to recover damages from Lessor for any breach of warranty or for any other reason; (4) to grant a security interest in the Equipment in Lessee's possession or control for any reason; (5) to setoff or deduct all or any part of any claimed damages resulting from Lessor's default, if any, under this Lease; or (6) to "cover" by making any purchase or lease of or contract to purchase or lease Equipment; provided, however, that no such waiver shall preclude Lessee from asserting any such claim against Lessor in a separate cause of action.

34. UCC Filings; Other Filings. (a) LESSEE HEREBY APPOINTS LESSOR OR ITS ASSIGNEE AS ITS TRUE AND LAWFUL ATTORNEY IN FACT, IRREVOCABLY AND COUPLED WITH AN INTEREST, TO EXECUTE AND FILE ON BEHALF OF LESSEE ALL UCC FINANCING STATEMENTS WHICH IN LESSOR'S SOLE DISCRETION ARE NECESSARY OR PROPER TO SECURE LESSOR'S INTEREST IN THE EQUIPMENT IN ALL APPLICABLE JURISDICTIONS.

(b) On or prior to the closing date with respect to a Unit, Lessee will (i) cause this Lease and the Equipment Schedule dated such closing date to be duly filed and recorded with the ICC in accordance with 49 U.S.C. § 11303, (ii) cause such filings and notices to be filed or made as necessary or appropriate to protect the interests of Lessor, (iii) cause precautionary Uniform Commercial Code financing statements naming Lessee as debtor and Lessor as secured party to be filed in such public offices as are deemed necessary or appropriate by Lessor to perfect the right, title and interest of Lessor in the Equipment, and (iv) file, register or record this Lease and the Equipment Schedule and all financing and continuation statements and similar instruments, in such other places within the United States as Lessor may reasonably request, and will furnish Lessor proof thereof.

35. Miscellaneous. If more than one Lessee is named in this Lease, the liability of each such Lessee shall be joint and several. Time is of the essence with respect to this Lease. Lessee represents and warrants that the Equipment is being leased hereunder solely for business purposes and that no item of Equipment will be used for personal, family or household purposes. **Any failure of Lessor to require strict performance by Lessee or any waiver by Lessor of any provision herein shall not be construed as a consent or waiver of any provision of this Lease.** Neither this Lease nor any Equipment Schedule may be amended except by a writing signed by Lessor and Lessee. This Lease and each Equipment Schedule shall be binding and inure to the benefit of the parties hereto, their permitted successors and assigns. This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Lease will be binding upon Lessor only if executed by a duly authorized officer or representative of Lessor at Lessor's principal place of business as set forth above. This Lease, and all other documents (the execution and delivery of which by Lessee is contemplated hereunder), shall be executed on Lessee's behalf by Authorized Signers of Lessee. **THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK.**

36. Quiet Enjoyment. So long as no Event of Default has occurred and is continuing, Lessee shall peaceably hold and quietly enjoy the Equipment without interruption by Lessor or any person or entity claiming through Lessor.

37. Entire Agreement. This Lease, together with all Equipment Schedules, riders and

addenda executed by Lessor and Lessee collectively constitute the entire understanding or agreement between Lessor and Lessee with respect to the leasing of the Equipment, and there is no understanding or agreement, oral or written, which is not set forth herein or therein.

38. Execution in Counterparts. This Equipment Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

39. Duty to Number and Mark Equipment. As soon as practicable after the closing date, Lessee will cause each Unit to be numbered with its reporting mark shown on the Equipment Schedule dated the closing date on which such Unit was delivered and covering such Unit, and will from and after such date keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each side of each Unit, in letters not less than one inch in height, a legend substantially as follows:

"TITLE TO THIS EQUIPMENT IS VESTED IN A THIRD PARTY FINANCIER
UNDER AN EQUIPMENT LEASE AGREEMENT RECORDED UNDER SECTION
11303 (FORMERLY 20C) OF THE INTERSTATE COMMERCE ACT "

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's right, title and interest in and to such Unit, its rights under this Lease. Except as provided hereinabove, Lessee will not place any such Units in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof, and will replace promptly any such word or words in such legend which may be removed, defaced, obliterated or destroyed. Lessee will not change the reporting mark of any Unit except in accordance with a statement of new reporting marks to be substituted therefor, which statement shall be delivered to Lessor by Lessee and a supplement to this Lease with respect to such new reporting marks shall be filed or recorded in all public offices where this Lease shall have been filed or recorded.

40. True Lease. (a) It is the express intent of the parties that the Lease constitute a true lease and not a sale of the Equipment. Title to the Equipment shall at all times remain in Lessor, and Lessee shall acquire no ownership, title, property, right, equity, or interest in the Equipment other than its leasehold interest solely as Lessee subject to all the terms and conditions hereof. To the extent that Article 2A ("Article 2A") of the Uniform Commercial Code ("UCC") applies to the characterization of this Lease, the parties hereby agree that this Lease is a "Finance Lease" as defined therein. Lessee acknowledges: (i) that Lessee has selected the "Supplier" (as defined in the UCC) and has directed Lessor to purchase the Equipment from the Supplier in connection with this Lease, and (ii) that Lessee has been informed in writing in this Lease, before Lessee's execution of this Lease, that Lessee is entitled under Article 2A to the promises and warranties, including those of any third party, provided to Lessor by the Supplier in connection with or as part of the Purchase Agreement, and that Lessee may communicate with the Supplier and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies. The filing of UCC financing statements pursuant to Section 34 of the Lease is precautionary and shall not be deemed to have any effect on the characterization of this Lease.

(b) Notwithstanding the express intent of Lessor and Lessee that this agreement constitute a

true lease and not a sale of the Equipment, should a court of competent jurisdiction determine that this agreement is not a true lease, but rather one intended as security, then solely in that event and for the expressly limited purposes thereof, Lessee shall be deemed to have hereby granted Lessor a security interest in this Lease, the Equipment, and all accessions thereto, substitutions and replacements therefor, and proceeds (including insurance proceeds) thereof (but

without power of sale), to secure the prompt payment and performance as and when due of all obligations and indebtedness of Lessee (or any affiliate of Lessee) to Lessor, now existing or hereafter created.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the day and year first above written.

Lessor:

KEYCORP LEASING LTD.

By: Steven R. DeCato
Name: Steven R. DeCato
Title: Contract Administration Manager

Lessee:

GWJ LEASING CORPORATION

By: _____
Name: _____
Title: _____

without power of sale), to secure the prompt payment and performance as and when due of all obligations and indebtedness of Lessee (or any affiliate of Lessee) to Lessor, now existing or hereafter created.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the day and year first above written.


Lessor:

KEYCORP LEASING LTD.

By: _____
Name:
Title:

Lessee:

GWJ LEASING CORPORATION

By:  _____
Name: Mark W Hash
Title: Treasurer

STATE OF)
) ss.:
COUNTY OF)

On this ____ day of October, 1994, before me the subscriber personally appeared Mark Hastings, to me personally known, who being by me duly sworn, says that he is _____ of GWI Leasing Corporation, that said instrument was signed on such date on behalf of said corporation by authority of the Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

NOTARY PUBLIC

My Commission Expires:

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On this 25 day of October, 1994, before me the subscriber personally appeared Steven R. DeCarlo, to me personally known, who being by me duly sworn, says that he is Contract Administration Manager of KeyCorp Leasing Ltd., that said instrument was signed on such date on behalf of said corporation by authority of the Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

NOTARY PUBLIC

My Commission Expires:

MARK P. MARAGLIO
Notary Public, State of New York
No. 4643412
Commission Expires March 30, 1995

STATE OF CONNECTICUT)
) ss.:
COUNTY OF FAIRFIELD)

On this 27th day of October, 1994, before me the subscriber personally appeared Mark Hastings, to me personally known, who being by me duly sworn, says that he is the Treasurer of GWI Leasing Corporation, that said instrument was signed on such date on behalf of said corporation by authority of the Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



NOTARY PUBLIC

My Commission Expires ~~1998~~ MY COMMISSION EXPIRES FEBRUARY 22, 1998

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On this ____ day of October, 1994, before me the subscriber personally appeared Steven R. DeCarlo, to me personally known, who being by me duly sworn, says that he is Contract Administration Manager of KeyCorp Leasing Ltd., that said instrument was signed on such date on behalf of said corporation by authority of the Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

NOTARY PUBLIC

My Commission Expires: